

**Federal Register**

**Tuesday  
January 29, 1991**

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**Part IV**

**Department of  
Transportation**

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**Coast Guard Research and Special  
Programs Administration**

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**46 CFR Part 146  
Transportation of Military Explosives by  
Vessel; Revocation; Final Rule**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## CFR Part 146

Arch and Special Programs  
Administration

(Docket No. HM-204A; Amdt. No. 146-1)

RIN 2137-AA10

Transportation of Military Explosives  
by Vessel; Revocation of 46 CFR Part  
146AGENCY: Coast Guard and Research and  
Special Programs Administration  
(RSPA), DOT.

ACTION: Final rule.

**SUMMARY:** RSPA, in consultation with the United States Coast Guard (USCG), is revoking 46 CFR part 146 which contains requirements for the transportation and stowage of military explosives on board vessels. This action is being done in conjunction with the final rule RSPA published in the Federal Register under Docket No. HM-181 on December 21, 1990 (55 FR 52401). Revocation of 46 CFR part 146 eliminates outdated requirements and requirements which overlap or conflict with the amendments of Docket No. HM-181.

**EFFECTIVE DATE:** These amendments are effective October 1, 1991.

## FURTHER INFORMATION CONTACT:

Mr. Frank K. Thompson, Office of Marine Safety, Security, and Environmental Protection, (G-MTH-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-1577, or Mr. John A. Gale, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, telephone (202) 366-4488.

## SUPPLEMENTARY INFORMATION:

## I. Background Information

On May 21, 1990, RSPA published a notice of proposed rulemaking (NPRM) (Notice No. 90-7; 55 FR 20996) under Docket No. HM-204A which proposed to revoke 46 CFR part 146 which contains requirements for the transport of military explosives on board vessels. The interested reader is referred to the NPRM for further background information.

On December 21, 1990, RSPA published in the Federal Register (55 FR 52401) a final rule concerning performance-oriented packaging, which included the carriage of hazardous materials by vessel (Docket No. HM-

181). Among other things, Docket No. HM-181 revises the requirements previously found in 46 CFR part 146 concerning the transportation of military explosives by vessel and relocates them in 49 CFR part 176. Therefore, the shipment of military explosives by vessel must comply with the requirements of 49 CFR part 176.

As stated in the "EFFECTIVE DATE" section of this amendment, the effective date of this final rule is October 1, 1991. However, in Docket No. HM-181, 49 CFR 171.14 has been added to the HMR to allow use of 46 CFR part 146 in effect on September 30, 1991 until October 1, 1993. Therefore, either the provisions of 46 CFR part 146 or the new 49 CFR part 176 may be used for the transportation and stowage of military explosives on board vessels until October 1, 1993. It will be in the interest of all persons involved in the transportation of military explosives by vessel to save the October 1, 1990, edition of 46 CFR part 146 until at least October 1, 1993, when compliance with 49 CFR part 176 becomes mandatory.

The first column of the following table lists the 46 CFR sections which are made obsolete by this final rule. The second column lists the corresponding provisions in 49 CFR and 33 CFR which are newly added or revised under Docket No. HM-181 or were in place prior to today's amendments.

46 CFR	49 CFR/33 CFR
<b>Subpart 146.01</b>	
§ 146.01-1	Existing § 176.1.
§ 146.01-3	Not replaced.
<b>Subpart 146.02</b>	
§ 146.02-1	Existing § 176.1.
§ 146.02-2	Existing § 176.5.
§ 146.02-5	Existing § 176.13.
§ 146.02-6	Existing § 176.15.
§ 146.02-6a	Existing § 176.18.
§ 146.02-12	Existing § 176.39.
§ 146.02-14	Existing § 176.50.
§ 146.02-15	Existing § 176.45.
§ 146.02-16	Existing § 176.52.
§ 146.02-20	Existing § 176.54.
§ 146.02-22	Existing § 176.36.
§ 146.02-25	Existing § 176.31. Existing § 176.65.
§ 146.02-35	Existing § 176.48.
<b>Subpart 146.05</b>	
§ 146.05-1	Existing § 171.2.
§ 146.05-3	Existing § 173.21.
§ 146.05-11	Existing § 176.27.
§ 146.05-12	Existing § 176.24.
§ 146.05-15	Existing § 171.2.
<b>Subpart 146.09</b>	
§ 146.09-7	Not replaced.
§ 146.09-8	Not replaced.
§ 146.09-11	New § 176.104.
§ 146.09-15	Revised § 176.78.
§ 146.09-16	Existing § 178.79.
<b>Subpart 146.20</b>	
§ 146.20-1	New § 173.50.
§ 146.20-3	New § 173.54; formerly existing § 173.51.
<b>46 CFR</b>	
§ 146.20-5	New § 173.50 and new § 173.52.
§ 146.20-7	New § 173.50 and new § 173.52.
§ 146.20-9	New § 173.50 and new § 173.52.
§ 146.20-11	New § 173.50 and new § 173.52.
§ 146.20-13	New § 173.56; formerly existing § 173.85.
§ 146.20-53	New § 176.164; formerly existing § 173.177.
<b>Subpart 146.29</b>	
§ 146.29-1	Not replaced.
§ 146.29-3	Not replaced.
§ 146.29-7	Revised § 176.4, new § 176.162.
§ 146.29-9	Existing § 176.12, revised § 176.11.
§ 146.29-11	New § 173.59, new § 176.2, new § 176.172.
§ 146.29-13	Revised § 176.100.
§ 146.29-14	Existing § 176.30.
§ 146.29-15	Existing 33 CFR 126.16.
§ 146.29-17	Revised § 176.3, new § 176.168.
§ 146.29-19	New § 176.102.
§ 146.29-21	New § 176.162, existing 33 CFR part 125.
§ 146.29-23	New § 176.108, new § 176.118.
§ 146.29-25	New § 176.150, new § 176.154, new § 176.164, new § 176.176, new § 176.178.
§ 146.29-27	New § 176.164.
§ 146.29-29	Existing § 176.60, new § 176.182(g).
§ 146.29-31	New § 176.182(f).
§ 146.29-33	New § 176.104, new § 176.192.
§ 146.29-35	New § 176.148.
§ 146.29-37	Not replaced.
§ 146.29-39	New § 176.104.
§ 146.29-41	Not replaced.
§ 146.29-42	Revised § 176.78, new § 176.170, new § 176.172.
§ 146.29-43	Not replaced.
§ 146.29-45	New § 176.104.
§ 146.29-47	Existing § 172.301, new § 173.60.
§ 146.29-49	Existing §§ 176.95 through 176.99, new § 176.104.
§ 146.29-51	Revised § 176.83, new § 176.112.
§ 146.29-53	New § 176.140, new § 176.194.
§ 146.29-55	New § 176.148.
§ 146.29-57	New § 176.138.
§ 146.29-59	Revised § 176.83, new § 176.140, new § 176.142.
§ 146.29-61	New § 176.140.
§ 146.29-63	Revised § 176.69, revised § 176.84(c), new § 176.124.
§ 146.29-65	New § 176.158.
§ 146.29-67	New § 176.158.
§ 146.29-69	New § 176.156.
§ 146.29-71	New § 176.128, new § 176.130, new § 176.132, new § 176.133.
§ 146.29-73	New § 176.116, new § 176.122.
§ 146.29-75	New § 176.122, new § 176.128.
§ 146.29-77	New § 176.112, new § 176.128.
§ 146.29-79	New § 176.128.
§ 146.29-81	New § 176.128, new § 176.130.
§ 146.29-83	New § 176.124, new § 176.128.
§ 146.29-85	New § 176.128, new § 176.136.
§ 146.29-87	New § 176.128, new § 176.136.
§ 146.29-89	New § 176.128, new § 176.136, new § 176.137, new § 176.138.
§ 146.29-90	New § 176.170.
§ 146.29-91	Revised § 176.84(c).
§ 146.29-93	Revised § 176.84(c), new § 176.144.
§ 146.29-95	New § 176.116.
§ 146.29-97	Revised § 176.53, new § 173.59, new § 176.116.
§ 146.29-99	New § 176.144.
§ 146.29-100	New § 173.51, revised § 176.83.

## H. Discussion of Public Comments

Six commenters responded to the NPRM. These comments are discussed in the following paragraphs.

One commenter stated that the revocation of 46 CFR part 146 and adoption of new standards would be costly in terms of education and training, contract revisions, and container marking/re-marking. The commenter provided no data to support the claim of increased costs; however, RSPA agrees that there are costs associated with the amendments set forth in Docket No. HM-181. These amendments will necessitate revisions in instruction manuals and training courses, and retraining of personnel. If RSPA did not undertake the changes promulgated under Docket No. HM-181, it is probable that revisions to the training materials would still have to be made to accommodate international shipments. RSPA believes that having a single regulatory system for both domestic and international shipments will in fact lower the costs associated with the training of individuals involved in hazardous materials transportation. Marking or re-marking of packages and containers is not a significant economic factor in regard to this final rule.

The same commenter was concerned that, because of two distinct systems existing during the transitional period, there would be increased potential for shipper errors, thus creating dangerous shipping conditions. RSPA notes that the Class 1 provisions of the International Maritime Dangerous Goods Code (IMDG Code)—the regulations used for the basis of the amendments to part 176 in Docket No. HM-181—are in world-wide use for military-type as well as for non-military-type explosives and that many shippers and carriers are familiar with, and conform to, both systems of regulation. RSPA is not aware of any data indicating that the incidence of accidents under the IMDG Code has been any more frequent or serious than under 46 CFR part 146.

Other commenters suggested that the requirements of 46 CFR 146.29-15 and 33 CFR 126.16 be incorporated into 49 CFR part 176. These rules set forth the conditions under which the USCG designates waterfront facilities as suitable for the loading, unloading, and handling of Class A (Divisions 1.1 and 1.2) and military explosives. These are port safety requirements issued by the USCG under statutes other than the Hazardous Materials Transportation Act (HMTA; 49 App. U.S.C. 1801 et seq.) and are beyond the scope of this rulemaking.

One commenter stated that 49 CFR 176.162 needs tightened language regarding personnel identification to reflect security details now included in 46 CFR 146.29-21. RSPA believes that 33 CFR part 125, specifically 33 CFR 125.15, covers most adequately the requirements concerning identification of personnel at waterfront facilities and on vessels.

Another commenter suggested that the fire-fighting directions found throughout 49 CFR part 176 should be consolidated into a single location. The commenter stated that this could facilitate reading and comprehension, and reduce the likelihood of operator error. Although this issue is beyond the scope of this rulemaking, RSPA will examine this issue for possible future rulemaking action.

One commenter was specifically concerned over the loss of the detailed instructions and procedures for the handling of military explosives previously found in 46 CFR part 146. The commenter stated that the HMR, as revised by Docket No. HM-181, should be more specific as to the kinds of power operated devices which can be used to load and unload Class 1 military munitions. The commenter also made the point that 49 CFR part 176, as revised by Docket No. HM-181, does not account for the stowage and dunnaging peculiar to the specific types of military explosives addressed in 46 CFR part 146. The commenter went on to state that the new regulations in 49 CFR part 176 do not provide the necessary guidance to ensure a safe system for ammunition stowage and handling aboard military and commercial cargo vessels. In developing the new 49 CFR part 176, RSPA—with guidance from the USCG—attempted to develop regulations that provided the highest level of safety while also allowing for flexibility and ingenuity. Therefore, many of the detailed instructions and procedures for the handling of military explosives previously found in 46 CFR part 146 were not adopted in 49 CFR part 176. It was never intended that the HMR should be a comprehensive manual or "how-to-do-it" handbook of cargo-handling operations and procedures. However, shippers and carriers may develop safety manuals or handbooks to enhance safety at waterfront facilities or on vessels.

One commenter stated that, because the proposed rules would not allow blasting caps, detonators, primer detonators, etc., to be stowed in the same compartment with, or an adjacent compartment to, other military explosives, the commenter's ability to

execute its port operations effectively and efficiently could be reduced by limiting the available load plan options. The commenter recommended that Docket No. HM-181 incorporate the requirement previously found in 46 CFR 146.29-93. The proposal under Docket No. HM-204 (May 21, 1990; Notice No. 90-6; 55 FR 20982) to prohibit the stowing of incompatible explosives in adjacent compartments was in error. In the final rule consolidated under Docket No. HM-181, the appropriate section has been changed to allow the stowing of incompatible explosives in adjacent compartments. However, RSPA believes that allowing the stowage within the same compartment of blasting caps, detonators, and primer detonators with other military explosives would present an unacceptable safety risk. If blasting caps, detonators, and primer detonators were allowed to be stowed with other military explosives, RSPA would be allowing the stowage of explosives with their source of ignition. Such a situation could possibly lead to the ignition of the explosive substance or article. Therefore, RSPA has denied the commenter's suggestion in part because it does not believe it is safe to allow blasting caps, detonators, and primer detonators to be stowed within the same compartment with other military explosives.

Two commenters objected to the statement "[t]he only significant difference between 'military' and other explosives is in their end use . . .", which appeared in the preamble of the NPRM. The commenters felt that this statement was incorrect and misleading in that it failed to recognize that military explosives are usually shipped as fully assembled devices and have additional hazards associated with fragmentation. In the NPRM, the point that RSPA was trying to make was that neither the international regulations developed by the UN and IMO, nor the domestic highway and rail regulations in the existing HMR, treat military explosives as a distinct class to be governed by a totally different regulatory regime from other explosives. Under the new regulations set forth in Docket No. HM-181, there will be only one regulatory system common to all explosives. Where special packaging, handling, or stowage is required due to an explosive article's fragmentation hazard, this has been recognized and accounted for in the 49 CFR 172.101 Table or in the text of the regulations. Where a military-type explosive substance or article has hazards which are the same as those of other types of explosive, both are treated in the same manner. RSPA

believes that the adoption of a universally recognized regulatory system, covering all types of explosives and applicable in all ports, will enhance the U.S. shipping industry's already excellent record of explosives safety.

### III. Administrative Notices

#### A. Paperwork Reduction Act

This final rule contains no information collection requirements.

#### B. Regulatory Flexibility Act

Based on limited information concerning the size and nature of entities likely to be affected by this final rule, I certify that this final rule does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Revoking 46 CFR Part 146 has little or no economic impact on shippers and transporters of military explosives, some of whom may be small businesses. Impacts attributable to the amendments made in the final rule issued under Docket No. HM-181 are addressed in that final rule.

#### C. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This final rule has no substantial direct impact on the States, on the Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Therefore, this final rule contains no policies with federalism implications as defined in Executive Order 12612.

#### D. Executive Order 12291

RSPA has determined that this rulemaking: (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) does not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act

(40 U.S.C. 4321 *et seq.*). Since the only purpose of this final rule is to inform interested readers of the revocation of regulations in 46 CFR part 146 and their transfer to 49 CFR part 176, RSPA has determined that a regulatory evaluation is not necessary because the anticipated impact of this final rule is minimal.

#### List of Subjects in 46 CFR Part 146

Arms and munitions, Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Vessels.

In consideration of the foregoing, under the authority of 49 App. U.S.C. 1804, the Research and Special Programs Administration removes part 146 of title 46, Code of Federal Regulations, effective October 1, 1991.

Issued in Washington, DC on January, 18, 1991, under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-1837 Filed 1-28-91; 8:45 am]

BILLING CODE 4910-60-M